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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2009 DEC 21 PM 3:46

CLERK OF COURT

BY:

S Smisko

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S MOTION IN**  
) **LIMINE TO PRECLUDE PRIOR**  
) **ACT EVIDENCE PURSUANT TO**  
) **RULE 404(b)**

) (Oral Argument Requested)

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20 Defendant Steven DeMocker, by and through his counsel, hereby moves this  
21 Court for an Order *in limine* precluding the State from offering evidence of other prior  
22 wrongs or acts allegedly committed by Defendant, pursuant to Rules 15.1 (b)(7), 404(b)  
23 and 403, and the Arizona and United States Constitutions, and due process. This  
24 motion is supported by the following Memorandum of Points and Authorities.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**  
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1 In the course of discovery and the evidentiary hearings conducted in this case,  
2 Defendant has come to believe that the State may attempt to offer evidence in their case  
3 in chief that he committed certain other prior acts in an effort to improperly impugn his  
4 character and persuade the jury that as a result, he must be guilty as charged. To date,  
5 the State has not disclosed any such prior acts as required by Rule 15.1(b)(7), nor have  
6 they complied with the procedural requirements of Rule 404(b), Rules of Evidence and  
7 the cases decided thereunder, and any such evidence should be precluded on those  
8 grounds alone.  
9

10  
11 In order to admit 404(b) prior act evidence, the Court must first find by clear and  
12 convincing evidence that the acts occurred and were committed by the person alleged to  
13 have done so by the State. *State v. Terrazas*, 189 Ariz. 580, 944 P.2d 1194 (1997).  
14 That burden requires the State to prove each individual allegation in a pre-trial hearing  
15 with live witnesses to support their alleged admissibility under Rule 404(b). *See, e.g.*,  
16 *State v. Aguilar*, 209 Ariz. 40, 107 P.3d 377 (2004) (holding use of grand jury transcript  
17 insufficient to prove 404(b) acts). Of course, the Court should, assuming appropriate  
18 proof is made, then consider a balancing of any probative value against the prejudicial  
19 effect of such evidence pursuant to Rule 403, and then determine whether each such  
20 discrete act otherwise meets the threshold admissibility requirements of Rules 402 and  
21 404(b) in the first place. However, to date the State has not indicated, more than  
22 fourteen months into this case and only four months from trial, that it has any 404(b)  
23 evidence at all to present.  
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1           However, it has become increasingly clear to the defense that the State intends to  
2 offer evidence of a wide range of alleged prior acts at trial as part of an overall strategy  
3 that would replace actual evidence of guilt with innuendo, rumor, gossip and irrelevant  
4 conduct to try to sway the jury into convicting Defendant because he is somehow a  
5 "bad person" without ever presenting the jury with any proof of his actual guilt.  
6 Accordingly, Defendant requests an Order specifically precluding the State from  
7 presenting evidence of the following alleged prior acts:

- 8           1.           That Defendant had relationships with other women during his  
9                       marriage which he did not always disclose to his wife;
- 10          2.           That Defendant conducted computer searches on topics related  
11                       to murder and killing;
- 12          3.           That Defendant intentionally and knowingly made false or  
13                       misleading statements in his divorce case or that he committed  
14                       financial fraud in the filing of his personal income tax returns;
- 15          4.           That prior to his arrest Defendant was planning to flee the  
16                       jurisdiction;
- 17          5.           That Defendant used human growth hormone or other  
18                       substances that adversely affected his behavior and led to the  
19                       killing of his former wife;
- 20          6.           That clients of Defendant complained about his work as their  
21                       financial advisor;
- 22          7.           That Defendant hid assets from his wife during their divorce or  
23                       prior thereto in order to keep them from being divided;
- 24          8.           That Defendant harmed any animal;
- 25          9.           That Defendant experienced a dysfunctional childhood;

1                   10.           That Defendant improperly attempted to influence any  
2                                   potential witness in this case; and

3                   11.           That Defendant is or was a "sex addict" or that he possessed or  
4                                   exhibited behaviors consistent with any particular  
5                                   psychological profile or disorder.

6                   Each of the foregoing categories of alleged conduct represents an area  
7 where the State has already put forth such evidence, or where discovery has lead the  
8 defense to conclude that if given the opportunity to do so, the State would attempt to  
9 introduce evidence of that conduct. This is an appropriate time, Defendant suggests, to  
10 flush out these issues and deal with them in an orderly manner prior to trial. Because  
11 there is no physical evidence linking Defendant to these crimes and because what  
12 physical evidence there is points away from Defendant, the State has chosen instead to  
13 attack Defendant's character with a host of false, irrelevant and unsupported claims and  
14 allegations. Unless that plan is stopped now, there is every reason to believe that this  
15 would be the way the State would try this case before the jury.

16  
17                                   **CONCLUSION**

18                   Defendant Steven DeMocker hereby requests that this Court preclude the use of  
19 the foregoing inadmissible prior act evidence by the State in their case in chief, or  
20 alternatively, conduct a Rule 404/403 hearing to determine its admissibility, as  
21 requested.

22                   DATED this 21<sup>st</sup> day of December, 2009.

23  
24                                   By: \_\_\_\_\_

25                                   John M. Sears  
26                                   P.O. Box 4080  
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28

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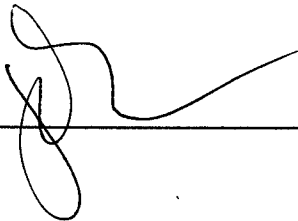
**ORIGINAL** of the foregoing  
filed this 21<sup>st</sup> day  
of December, 2009, with:

Jeanne Hicks  
Clerk of the Court  
Yavapai County Superior Court  
120 S. Cortez  
Prescott, AZ 86303

**COPIES** of the foregoing delivered  
this 21<sup>st</sup> day of December, 2009, to:

The Hon. Thomas B. Lindberg  
Judge of the Superior Court  
Division Six  
120 S. Cortez  
Prescott, AZ 86303

Joseph C. Butner, Esq.  
Yavapai County Attorney  
Prescott courthouse basket



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